

STATE OF INDIANA) IN THE MARION CIRCUIT/SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO. _____

400030705PL021579

STATE OF INDIANA,)

Plaintiff,)

v.)

KELLI M. ACTON)

also known as)

KELLI SULLIVAN)

individually and doing business as)

SIXKIDSANDASTORE.COM, and)

THE ATTITUDE BOUTIQUE, LLC, and)

THE ATTITUDE BOUTIQUE, LLC,)

Defendants)

FILED

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MAY 24 2007

Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION,
RESTITUTION, COSTS, AND CIVIL PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. At all times relevant to this complaint, the Defendant, Kelli M. Acton, also known as Kelli Sullivan, individually and doing business as SixKidsandaStore.com, was an individual engaged in the sale of items via the Internet from her principal places of business located in Marion County at 8628 Orchard Grove Lane, Camby, Indiana, 46113, and in Johnson County at 640 U.S. Highway 31 South, Suite F, #104, Greenwood, Indiana, 46142.

3. At all times relevant to this Complaint, the Defendant, The Attitude Boutique, LLC, was a domestic limited liability company engaged in the sale of items via the Internet from its principal places of business located in Marion County at 8628 Orchard Grove Lane, Camby, Indiana, 46113, and in Morgan County at 498 Town Center St N #241, Mooresville, IN 46158.

FACTS

4. Since at least November 9, 2005, the Defendants have represented they would sell consumer electronics to consumers.

5. When, in this Complaint, reference is made to any act of the Defendants, such allegations shall be deemed to mean the principals, agents, representatives, or employees of the Defendants did or authorized such acts to be done while actively engaged in the management, direction, or control of the affairs of Defendants and while acting within the scope of their duties, employment, or agency for the benefit of the Defendants.

6. The Defendant, Kelli M. Acton, also known as Kelli Sullivan, is the registered agent of The Attitude Boutique, LLC. Upon information and belief, the Defendant, Kelli M. Acton, is a principal of the Defendant Company, failed to operate the Company as a distinct entity, and has used the Company to defraud others.

A. Allegations Regarding the Defendants' Transactions with Consumers Amy and Steve Schneller.

7. On or about June 9, 2006, the Defendants entered into a contract via the Internet with Amy and Steve Schneller ("the Schnellers") of Jacksonville, Florida, wherein the Defendants represented they would sell an iPod nano to the Schnellers for a total price of One Hundred Forty-One Dollars and Thirty-Five Cents (\$141.35), which the Schnellers paid.

8. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the iPod within a reasonable period of time.

9. As of today, the Defendants have yet to either deliver the iPod to the Schnellers, or to provide a refund.

B. Allegations Regarding the Defendants' Sales of Sony PlayStation 3 Game Console to Consumers.

10. During the Fourth Quarter of 2006, many media outlets predicted the Sony PlayStation 3 Video Game Console ("PS3") would be one of the holiday season's hottest items, resulting in high demand and a low supply of the consoles.

11. As a result of this short supply, the PS3s were reportedly being sold for several thousands of dollars to consumers.

12. Beginning on November 11, 2006, the Defendants, operated a website, www.sixkidsandastore.com, and represented they would sell PS3s to Consumers.

13. Based upon these representations, on the following dates, the following consumers ordered PS3s and paid the following amounts:

a.	11/7/06	Henry Atkins of Midlothian, Virginia	\$ 563.38;
b.	11/7/06	Shahab Azarfar of Moorpark, California	\$ 524.00;
c.	11/7/06	Dan Brugal of Manhasset, New York	\$ 800.67;
d.	11/11/06	Stephen Bell of Orlando, Florida	\$ 567.35;
e.	11/11/06	Mark Bender of Encinitas, California	\$ 666.78;
f.	11/7/06	Nathan Burns of Nashua, New Hampshire	\$ 509.00;
g.	11/7/06	John Crimming of Athens, Georgia	\$ 518.40;
h.	11/7/06	Zac Crowder of Charlotte, North Carolina	\$1,008.65;
i.	11/7/06	Kevin Deshler of Titusville, Florida	\$ 404.55;
j.	11/11/06	Gary DiPasquale of East Norwich, New York	\$ 564.07;
k.	11/7/06	Lori Erb of Boyertown, Pennsylvania	\$ 518.40;
l.	11/8/06	Sandra Espinosa of North Bergen, New Jersey	\$ 567.35;
m.	11/9/06	Ted Evans of San Diego, California	\$ 571.35;
n.	11/9/06	Ned Hawkins of Denver, Colorado	\$ 564.07;
o.	11/11/06	Gerald Hayden of Kettering, Ohio	\$ 562.36;
p.	11/13/06	Eric Kafrawy of Kingston, Massachusetts	\$ 567.35;
q.	11/7/06	Jeff Lexander of Streamwood, Illinois	\$ 501.17;

r.	11/9/06	David Dan Linge of San Marcos, California	\$2,065.20;
s.	11/7/06	Anthony Maulton of Wilmington, North Carolina	\$ 509.15;
t.	11/26/06	Linda Morgan of Sherwood, Arkansas	\$ 516.90;
u.	11/8/06	Russell Morgan of Bellevue, Nebraska	\$ 516.90;
v.	11/9/06	Andreas O'Keeffe of Tampa, Florida	\$ 562.24;
w.	12/8/06	Jordan Peila of Shepherd, Montana	\$ 568.80;
x.	11/8/06	Cesar Quezada of North Bergen, New Jersey	\$ 517.35;
y.	11/9/06	Necat Redzepi of Phoenix, Arizona	\$ 566.78;
z.	11/9/06	Edmund Rogers of Cambridge, Massachusetts	\$ 462.00;
aa.	11/7/06	Patricia Trogon of Kistler, West Virginia	\$ 141.35;
bb.	11/8/06	Matt and Kit Thomas of Missouri City, Texas	\$ 514.00; and
cc.	11/14/06	Nancy and Adam Wolf of Los Angeles, California	\$ 571.35.

14. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of sale they would deliver the merchandise to the consumers, as originally represented, within a reasonable period of time.

15. The Defendants failed to ship any of the PS3s to Consumers. Shortly after the Defendants were contacted by the Office of the Attorney General, many of these consumers received refunds, primarily in the form of chargebacks from their credit card company. However, as of today, Nancy and Adam Wolf of Los Angeles, California, have yet to receive either their PS3, or a refund from the Defendants.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

16. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 15 above.

17. The transactions referred to in paragraphs 7, 12, and 13 are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

18. The Defendants are “suppliers” as defined by Ind. Code § 24-5-0.5-2(a)(3).

19. The Defendants’ representations to consumers they would sell items to those consumers, when the Defendants knew or reasonably should have known the consumers would not receive the items as represented, or any other such benefit, as referenced in paragraphs 7, 12, and 13, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

20. The Defendants’ representations to Consumers that their supply of PS3s was sufficient to satisfy Consumers’ orders, when the available supply was less than intended, or that could be reasonably expected, as referenced in paragraphs 12 and 13, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(4).

21. By representing the Defendants could deliver the merchandise sold to consumers, or otherwise complete the subject of the consumer transaction, within a reasonable amount of time, when the Defendants knew or reasonably should have known they could not do so, as referenced in paragraphs 8 and 14, the Defendants violated Ind. Code §24-5-0.5-3(a)(10).

22. By representing the consumers would be able to purchase the merchandise as advertised by the Defendants, when the Defendants did not intend to sell the merchandise, as referenced in paragraphs 7, 12, and 13, the Defendants violated Ind. Code §24-5-0.5-3(a)(11).

**COUNT II – KNOWING AND INTENTIONAL VIOLATIONS OF
THE DECEPTIVE CONSUMER SALES ACT**

23. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 22 above.

24. The misrepresentations and deceptive acts set forth in paragraphs 7, 8, 12, 13, and 14 were committed by the Defendants with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Kelli M. Acton, also known as Kelli Sullivan, individually and doing business as SixKidsandaStore.com and The Attitude Boutique, LLC, and the Defendant, The Attitude Boutique, LLC, and issue a permanent injunction, pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendants from the following:

- a. representing, expressly or by implication, the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have, when the Defendants know or reasonably should know it does not have;
- b. representing, expressly or by implication, the subject of a consumer transaction will be supplied to the public in greater quantity than the Defendants intends or reasonably expects;
- c. representing, expressly or by implication, the Defendants are able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendants know or reasonably should know they cannot; and

- d. representing, expressly or by implication, consumers will be able to purchase the subject of a consumer transaction as advertised by the Defendants, if the Defendants do not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants for the following relief:

a. cancellation of the Defendants' unlawful contracts with consumers Amy and Steve Scheller, Henry Atkins, Shahab Azarfar, Dan Brugal, Stephen Bell, Mark Bender, Nathan Burns, John Crimming, Zac Crowder, Kevin Deshler, Gary DiPasquale, Lori Erb, Sandra Espinosa, Ted Evans, Ned Hawkins, Gerald Hayden, Eric Kafrawy, Jeff Lexander, David Dan Linge, Anthony Maulton, Linda Morgan, Russell Morgan, Andreas O'Keeffe, Jordan Peila, Cesar Quezada, Necat Redzepi, Edmund Rogers, Patricia Trogdon, Matt and Kit Thomas, and Nancy and Adam Wolf.

b. consumer restitution, pursuant to Ind. Code § 24-5-0.5-4(c)(2), in the amount of Seven Hundred Twelve Dollars and Seventy Cents (\$712.70), payable to the Office of the Attorney General for allocation and distribution to the following consumers in the following amounts:

1. Amy and Steve Schneller of Jacksonville, Florida \$141.35;
 2. Nancy and Adam Wolf of Los Angeles, California \$571.35
- Total: \$712.70**

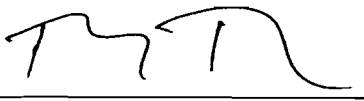
c. costs, pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

- d. civil penalties, pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;
- e. civil penalties, pursuant to Ind. Code § 24-5-0.5-8, for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- f. all other just and proper relief.

Respectfully submitted,

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By:



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